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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/162,768	09/30/1998	JOHN S. HENDRICKS	5315	9228

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EXAMINER

KOENIG, ANDREW Y

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/162,768

Applicant(s)

HENDRICKS ET AL.

Examiner

Andrew Y Koenig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) See Continuation Sheet is/are allowed.
- 6) ☒ Claim(s) 41 and 114 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). ↗

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 1,3-15,17,18,20-35,37-43,45,47-60,62,64-80,82-98,101-104,107-116,118 and 120-145.

Continuation of Disposition of Claims: Claims allowed are 1,3-15,17,18,20-35,37-40,42,43,45,47-60,62,64-80,82-98,101-104,107-113,115,116,118 and 120-145.

DETAILED ACTION

1. Applicant's arguments with respect to claims 41 and 114 have been considered but are moot in view of the new ground(s) of rejection.

Evidence for a first tuner coupled to a receiver that receives television program signals and the digital audio signal has been provided by the applicant in that the digital audio signal is received at the set top terminal over the CATV transmission media (pg. 73, ll. 11-18 of the applicant's specification) and evidence that the first tuner receives the information as shown in figure 12b.

Claims 41 and 114 do not receive benefit of the earlier filing date, in that there is no support for their limitations. Claims 41 and 114 are originally filed claims, and thereby receive the benefit of 30 September 1998. Accordingly, a rejection has been made with respect to these claims.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "200" and "220" have both been used to designate a set top terminal (as shown in figures 12A and 12B). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct

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any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

It appears that label "200" should be changed to "220" to denote the set top terminal.

Allowable Subject Matter

3. Claims 1, 3-15, 17, 18, 20-35, 37-40, 42, 43, 45, 47-60, 62, 64-80, 82-98, 101-104, 107-113, 115, 116, 118, and 120-145 are allowed.
4. The following is a statement of reasons for the indication of allowable subject matter:
5. Prior art of record fails to show or reasonable suggest a first tuner coupled to a receiver that receives television program signals and the digital audio signals (where the digital audio signals represent audio programs) from a television program delivery system.

As discussed in previous actions, Graczyk teaches the use of two tuners (one for television signals and another for radio signals), but Graczyk fails to teach a single tuner receiving both television and digital audio signals. The examiner notes that the digital audio signals are well known in the art. However, prior art of record fails to teach or suggest modifying the system of Graczyk by combining the two separate tuners into a single tuner.

Even if the system would receive digital audio signals by the first tuner, there is no motivation to use a second tuner to select the digital audio signals, as recited in the claims.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 41 and 114 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,990,927 to Hendricks et al. (hereinafter Hendricks '927) in view of U.S. Patent 5,862,299 to Lee et al. (hereinafter Lee).

Regarding claim 41, Hendricks '927 clearly teaches the limitations of dependent claim 37. Hendricks '927 teaches backyard satellite reception equipment (col. 42, ll. 32-50), but Hendricks '927 is silent on a direct satellite broadcast system. In analogous art, Lee teaches the use of a direct satellite broadcast system (col. 3-4, ll. 62-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks '927 by using a direct satellite broadcast system as taught by Lee in order to diversify the transportation of information to areas without cable services available (Hendricks '927: col. 42, ll. 30-33).

Regarding claim 114, Hendricks '927 clearly teaches the limitations of dependent claim 110. Hendricks '927 teaches backyard satellite reception equipment (col. 42, ll.

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32-50), but Hendricks '927 is silent on a direct satellite broadcast system. In analogous art, Lee teaches the use of a direct satellite broadcast system (col. 3-4, ll. 62-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks '927 by using a direct satellite broadcast system as taught by Lee in order to diversify the transportation of information to areas without cable services available (Hendricks '927: col. 42, ll. 30-33).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Y Koenig whose telephone number is (703) 306-0399. The examiner can normally be reached on M-Th (7:30 - 6:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (703) 305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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CHRIS GRANT
PRIMARY EXAMINER